

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.:	10/698,157	Confirmation No.:	9846
Applicant:	Steven K. Ribling	TC/A.U.:	2192
Filed:	October 31, 2003	Examiner:	Isaac Tuku Tecklu
Docket No.:	H0003463	Customer No.:	000128

Title: DATA EMPOWERED LABORSAVING TEST ARCHITECTURE

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**ARGUMENTS ACCOMPANYING PRE-APPEAL BRIEF REQUEST FOR REVIEW****I. Claims Rejected Under 35 U.S.C. § 102**

Claims 1-23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,146,572 B2 issued to Richardson (“Richardson”). Applicant traverses the rejection because A) the Patent Office has failed to establish a *prima facie* case of anticipation under 35 U.S.C. § 102; and B) Richardson fails to disclose each and every element of claim 1.

**A. The Patent Office Has Failed to Establish a *Prima Facie* Case of Anticipation**

1. The “plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence” elements

Claim 1 recites the elements of, “a computer readable storage medium comprising a plurality of control files.” In making the rejection, the Patent Office provides the definition of a test module and a sequence file, and a definition does not disclose more than one control file stored on a computer readable storage medium as recited in claim 1 because a definition only describes what constitutes a test module and a sequence file, not a quantity. Therefore, the Patent Office has not established a *prima facie* case of anticipation.

2. The “test executive software module configured to select a test sequence to use based on a unit-under-test” elements

In rejecting claim 1, the Patent Office alleges that the excerpt “determine whether to execute a step” from column 10, lines 2-50 of *Richardson* and the excerpt “executive sequence may be operable to perform one or more test of the unit-under-test” from column 6 of *Richardson* disclose

“a test executive software module configured to select a test sequence to use based on a unit-under-test,” as recited in claim 1 (Paper No./Mail Date 20071126, page 3). Applicant submits that determining whether to execute a step within a test sequence and a sequence that can operate one or more tests on a unit-under-test is not the same as a module that is capable of selecting a test sequence based on the unit-under-test because in the Patent Office’s characterization of *Richardson* does not include at least 1) a module selecting a test sequence; and 2) the selection being based on the unit-under-test. Therefore, the Patent Office has not established a *prima facie* case of anticipation.

3. The “test framework software module configured to receive a selected test sequence from the test executive software module, determine how to perform the selected test sequence, and perform the selected test sequence” elements

In further rejecting claim 1, the Patent Office alleges that “test executive software may be operable to receive user input to a GUI” as disclosed in column 6, lines 60-65 of *Richardson* discloses “a test framework software module configured to receive a selected test sequence from the test executive software module,” as recited in claim 1 (Paper No./Mail Date 20071126, page 3, emphasis added to “user input”). Claim 1 recites that the selected test sequence is received from the test executive software module, whereas the Patent Office’s characterization states that the test executive software may be operable to receive user input. Moreover, claim 1 recites that a test framework software module is configured to receive the selected test sequence from the test executive software module, whereas the Patent Office’s characterization of *Richardson* clearly recites that it is the test executive software that receives user input. Therefore, that the Patent Office has not established a *prima facie* case of anticipation.

4. The “plurality of software components in a software components module coupled for interaction with the test framework software module and structured for outputting at least one test report” elements

When rejecting claim 1, the Patent Office alleges that “test modules to test units-under-test (UUTs)” and “the test modules may interact with one or more hardware instruments to test the UUT(s)” disclosed on col. 1, lines 15-25 of *Richardson*, and “test executive sequence for unit-under-test” disclosed in column 8, lines 40-50 of *Richardson* discloses the elements of, “a plurality of

software components in a software components module coupled for interaction with the test framework software module and structured for outputting at least one test report,” as recited in claim 1. This characterization of *Richardson* fails to mention a test report of any kind, let along outputting a test report. Therefore, the Patent Office has not established a *prima facie* case of anticipation.

#### **B. *Richardson* Fails to Disclose Each and Every Element**

1. The “plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence” elements

*Richardson* discloses a computer system that includes a memory medium on which test executive software is stored (see *Richardson*, Col. 6, lines 50-52). *Richardson* further discloses that “the test executive software may allow a user to create or configure a test executive sequence, and/or control test executive sequence execution for various test applications, such as production and manufacturing test applications” (*Richardson*, Col. 6, lines 52-56). Applicant submits that *Richardson* clearly discloses only one test executive sequence and/or one control test executive sequence. In contrast, claim 1 recites a computer readable storage medium comprising “a plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence” (emphasis added). Therefore, *Richardson* fails to disclose at least “a plurality of control files, each control file defining a test sequence for one of a plurality of units-under-test and instructions for executing the test sequence,” as recited in claim 1.

2. The “test executive software module configured to select a test sequence to use based on a unit-under-test” elements

As discussed above, the Patent Office alleges that the excerpt “determine whether to execute a step” from column 10, lines 2-50 of *Richardson* and the excerpt “executive sequence may be operable to perform one or more test of the unit-under-test” from column 6 of *Richardson* discloses “a test executive software module configured to select a test sequence to use based on a unit-under-test,” as recited in claim 1 (Paper No./Mail Date 20071126, page 3). Applicant submits that determining whether to execute a step within a test sequence and a sequence that can operate one or more tests on a unit-under-test is different from a module that is capable of selecting a test sequence, and is certainly different from a module that is capable of making the selection based on the unit.

under-test. Therefore, *Richardson* fails to disclose at least “a test executive software module configured to select a test sequence to use based on a unit-under-test,” as recited in claim 1.

3. The “test framework software module configured to receive a selected test sequence from the test executive software module, determine how to perform the selected test sequence, and perform the selected test sequence” elements

As discussed above, the Patent Office alleges that “test executive software may be operable to receive user input to a GUI” as disclosed in column 6, lines 60-65 of *Richardson* discloses “a test framework software module configured to receive a selected test sequence from the test executive software module,” as recited in claim 1 (Paper No./Mail Date 20071126, page 3). Here, *Richardson* clearly states that the test executive software receives user input, not a selected test sequence from a test executive software module, as recited in claim 1. It is clear that receiving user input and receiving a selected test sequence from the test executive software module are not equivalent because: 1) the sending entity is different (i.e., a user verses a test executive software module); and 2) the receiving entity is different (i.e., claim 1 recites that the test framework software module is configured to receive the selected test sequence). Therefore, Applicant submits that *Richardson* fails to disclose at least “a test framework software module configured to receive a selected test sequence from the test executive software module, determine how to perform the selected test sequence, and perform the selected test sequence,” as recited in claim 1.

4. The “plurality of software components in a software components module coupled for interaction with the test framework software module and structured for outputting at least one test report” elements

As discussed above, the Patent Office alleges that “test modules to test units-under-test (UUTs)” and “the test modules may interact with one or more hardware instruments to test the UUT(s)” disclosed on col. 1, lines 15-25 of *Richardson*, and “test executive sequence for unit-under-test” disclosed in column 8, lines 40-50 of *Richardson* discloses the elements of, “a plurality of software components in a software components module coupled for interaction with the test framework software module and structured for outputting at least one test report,” as recited in claim 1. At best, *Richardson* discloses that:

various results of the execution of the test executive sequence may be collected by the test executive software. As described in detail below, the test executive software

may be operable to receive user input to a graphical user interface (GUI) to specify desired database result logging criteria. The test executive software may then log at least a portion of the execution results for the test executive sequence to the database 101, according to the specified result logging criteria. (Col. 6, lines 59-62).

Applicant submits that *Richardson*'s results are collected and stored in a database, which collecting and storing are different functions than outputting a report detailing test results. Therefore, Applicant submits that *Richardson* fails to disclose at least "a plurality of software components in a software components module coupled for interaction with the test framework software module and structured for outputting at least one test report," as recited in claim 1.

Applicant has shown in detail that the Patent Office has not established a *prima facie* case of anticipation and that *Richardson* does disclose each and every element of claim 1. Therefore, claim 1 is not anticipated by *Richardson*. Accordingly, Applicant respectfully request withdrawal of the rejection of claim 1 and claims 2-5, which depend from claim 1.

Applicant submits that independent claims 6, 11, and 18 each recite elements similar to claim 1 discussed above. Therefore, Applicant submits that claims 6, 11, and 18 are not anticipated by *Richardson* at least for the same reasons as claim 1, in addition to their own respective features. Accordingly, Applicant respectfully request withdrawal of the rejection of independent claims 6, 11, and 18, and claims 7-10, 12-17, and 19-23, which depend from claims 6, 11, and 18, respectively.

### **CONCLUSION**

In view of the foregoing, the above-noted rejections of claims 1-23 should be withdrawn and Applicant requests that the reviewing panel find that the present application is in condition for allowance.

Also included with this pre-appeal brief is payment for a one-month extension of time. If for some reason the Applicant has not paid a sufficient fee for this response, please consider this as authorization to charge Deposit Account No. 50-2091 for any fee which may be due.

Respectfully submitted,

Date: June 13, 2008

/JASON R. GRAFF, REG. NO. 54134/  
Jason R. Graff

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) H0003463	
		First Named Inventor Steven K. Ribling	
		Application Number 10/698,157	Filed 10/31/2003
		For: DATA EMPOWERED LABORSAVING TEST ARCHITECTURE	
		Group Art Unit 2192	Examiner Tecklu, Isaac Tuku
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).</p> <p>Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor. <u>JASON R. GRAFF/</u> Signature</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <u>Jason R. Graff</u> Printed Name</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number 54,134 <u>(480) 385-5060</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34(a) Registration number if acting under 37 CFR 1.34(a). <u>Telephone Number</u> <u>June 13, 2008</u> Date</p>			
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			

This collection of information is required by 37 CFR 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.